

California State Anti-Piracy Laws

Business and Professions Code

Unfair Business Practices Act contains the, "Truth in Music Advertising Act," which specifically makes it a civil violation for any person to advertise or conduct a live musical performance through the use of deceptive practices

Enforcement: Generally, the Unfair Practices Act provides civil remedies which could be pursued by the AG, city or County counsel, district attorneys, and, against an entity or individual. Damages include a civil penalty of \$2,500 for each violation and an injunction under Business and Professions Code Section 17200 et seq. Common law also permits general tort damages.

In addition, any violation is a misdemeanor punishable by imprisonment in the county jail not exceeding six months, or by a fine not exceeding \$2,500, or by both that imprisonment and fine. (B&P Code Section 17500.)

Civil Code

CC 3344. Declares that any person who knowingly uses another's name, voice, signature, photograph, or likeness, in any manner, on or in products, merchandise, or goods, or for purposes of advertising or selling, or soliciting purchases of, products, merchandise, goods or services, without such person's prior consent, or, in the case of a minor, the prior consent of his parent or legal guardian, shall be liable for any damages sustained by the person or persons injured as a result thereof.

CC 3344.1. Further provides that any person who uses a deceased personality's name, voice, signature, photograph, or likeness, in any manner, on or in products, merchandise, or goods, or for purposes of advertising or selling, or soliciting purchases of, products, merchandise, goods, or services, without consent, shall be liable for damages.

Enforcement: Through a tort action, aka lawsuit. In addition, in any action brought under this section, the person who violated the section shall be liable to the injured party or parties in an amount equal to the greater of seven hundred fifty dollars (\$750) or the actual damages suffered by him or her as a result of the unauthorized use, and any profits from the unauthorized use that are attributable to the use and are not taken into account in computing the actual damages. Punitive damages may also be awarded to the injured party or parties.

Code of Civil Procedure

Declares that any non-residential property unlawfully used for the manufacture, sale, or knowing possession of counterfeit goods constitutes a nuisance and authorizes various public and private remedies.

Enforcement: Violation is a misdemeanor. Enforcement actions may be brought by a district attorney, city attorney, or any citizen or resident to bring an action to

abate and prevent the nuisance and perpetually enjoin the person conducting or maintaining the nuisance Also actions for unlawful detainer actions are available.

Penal Code

PC 350. (a) Any person who willfully manufactures, intentionally sells, or knowingly possesses for sale any counterfeit mark registered with the Secretary of State or registered on the Principal Register of the United States Patent and Trademark Office is guilty of a crime.

Enforcement: When the offense involves less than 1,000 articles with a total retail or fair market value less than that required for grand theft as defined in Section 487, and if the person is an individual, he or she shall be punished by a fine of not more than five thousand dollars (\$5,000), or by imprisonment in a county jail for not more than one year, or by both that fine and imprisonment; or, if the person is a business entity, by a fine of not more than one hundred thousand dollars (\$100,000).

When the offense involves 1,000 or more of the articles described in this subdivision, or has a total retail or fair market value equal to or greater than that required for grand theft as defined in Section 487, and if the person is an individual, he or she shall be punished by imprisonment in a county jail not to exceed one year, or in the state prison for 16 months, or two or three years, or by a fine not to exceed two hundred fifty thousand dollars (\$250,000), or by both that imprisonment and fine; or, if the person is a business entity, by a fine not to exceed five hundred thousand dollars (\$500,000).

PC 653h, which prohibits "pirated" recordings made by duplication. This section provides that it is a crime for any person to knowingly and willfully transfer any sounds that have been recorded on a phonograph record, disc, wire, tape, film or other article on which sounds are recorded, with intent to sell or cause to be sold, or to use or cause to be used for commercial advantage or private financial gain through public performance, the article on which the sounds are so transferred, without the consent of the owner. It also makes it a crime to transport such articles for consideration, with the knowledge that the sounds thereon have been transferred without the consent of the owner.

Enforcement: Any person who has been convicted of a violation of transporting less than 1000 articles shall be punished by imprisonment in the county jail not to exceed one year, or by a fine of not more than twenty-five thousand dollars (\$25,000), or by both.

If the offense involves the transfer or transportation of not less than 1,000 articles, imprisonment in the county jail not to exceed one year, by imprisonment in the state prison for two, three, or five years, or by a fine not to exceed two hundred fifty thousand dollars (\$250,000), or by both.

A second or subsequent conviction of transporting over 1000 articles shall be punished by imprisonment in the state prison or by a fine not to exceed one hundred thousand dollars (\$100,000), or by both.

PC 653s, which prohibits transporting "pirated" recordings of live shows. This section provides that it is a crime for any person to transport or causes to be transported for monetary or other consideration within this state, any article containing sounds of a live performance with the knowledge that the sounds thereon have been recorded or mastered without the consent of the owner of the sounds of the live performance.

Enforcement: Any person who has been convicted of a violation of transporting less than 1000 articles shall be punished by imprisonment in the county jail not to exceed one year, or by a fine of not more than twenty-five thousand dollars (\$25,000), or by both.

If the offense involves the transfer or transportation of not less than 1,000 articles, imprisonment in the county jail not to exceed one year, by imprisonment in the state prison for two, three, or five years, or by a fine not to exceed two hundred fifty thousand dollars (\$250,000), or by both.

A second or subsequent conviction of transporting over 1000 articles shall be punished by imprisonment in the state prison or by a fine not to exceed one hundred thousand dollars (\$100,000), or by both.

PC 653u, which prohibits making "pirated" recordings of live shows. This section provides that it is a crime to record or master, or cause to be recorded or mastered on any article, with the intent to sell for commercial advantage or private financial gain, the sounds of a live performance, with the knowledge that the sounds thereon have been recorded or mastered without the consent of the owner of the sounds of the live performance.

Enforcement: Any person who has been convicted of a violation of recording or mastering less than 1000 articles shall be punished by imprisonment in the county jail not to exceed one year, or by a fine of not more than twenty-five thousand dollars (\$25,000), or by both.

If the offense involves the recording or mastering of not less than 1,000 articles, imprisonment in the county jail not to exceed one year, by imprisonment in the state prison for two, three, or five years, or by a fine not to exceed two hundred fifty thousand dollars (\$250,000), or by both.

A second or subsequent conviction of recording or mastering over 1000 articles shall be punished by imprisonment in the state prison or by a fine not to exceed one hundred thousand dollars (\$100,000), or by both.

PC 653w, which prohibits advertising or offering a recording or audiovisual work for sale, resale or rental, without disclosing the origin of the recording or audiovisual work, or, who manufactures or possesses such goods for commercial advantage or private financial gain.

A person is guilty of failure to disclose the origin of a recording or audiovisual work if, for commercial advantage or private financial gain, he or she knowingly any recording or audiovisual work, the cover, box, jacket, or label of which does not clearly and conspicuously disclose the actual true name and address of the manufacturer.

Enforcement: If the offense involves the a violation of less than 100 articles, it shall be punished by imprisonment in the county jail not to exceed one year, or by a fine of not more than twenty-five thousand dollars (\$25,000), or by both.

If the offense involves not less than 1,00 articles, punishment shall be imprisonment in the county jail not to exceed one year, by imprisonment in the state prison for two, three, or five years, or by a fine not to exceed two hundred fifty thousand dollars (\$250,000), or by both.

A second or subsequent conviction of over 100 articles shall be punished by imprisonment in the state prison or by a fine not to exceed one hundred thousand dollars (\$100,000), or by both.

PC 653z. Every person who operates a recording device in a motion picture theater while a motion picture is being exhibited, for the purpose of recording a theatrical motion picture and without the express written authority of the owner of the motion picture theater, is guilty of a public offense.

Enforcement: Imprisonment n a county jail not exceeding one year, by a fine not exceeding two thousand five hundred dollars (\$2,500), or by both that fine and imprisonment.

PC 653aa. Subject to certain exceptions, any person, except a minor, who, knowingly electronically disseminates all or substantially all of a commercial recording or audiovisual work to more than 10 other people without disclosing his or her e-mail address, and the title of the recording or audiovisual work

Enforcement: Conviction is punishable by a fine not exceeding two thousand five hundred dollars (\$2,500), imprisonment in a county jail for a period not exceeding one year, or by both that fine and imprisonment.

Any minor who violates subdivision (a) is punishable by a fine not exceeding two hundred fifty dollars (\$250). Any minor who commits a third or subsequent violation of subdivision (a) is punishable by a fine not exceeding one thousand dollars (\$1,000), imprisonment in a county jail for a period not to exceed one year, or by both that imprisonment and fine.

PC 1202.4. The Penal Code requires a court to order persons convicted of crimes relating to music piracy to pay restitution to persons who have suffered economic loss as a result of the illegal activity. Section 1202.4 provides that in cases of piracy, the order of restitution is based on the aggregate wholesale value of lawfully manufactured and authorized devices or articles from which sounds or

visual images are devised corresponding to the number of nonconforming devices or articles involved in the violation, unless a greater value can be proven.

The PC further provides that the order of restitution shall also include costs incurred as a result of any investigation of the violation undertaken by the owner, lawful producer, or trade association acting on behalf of the owner or lawful producer.

Enforcement: Through court order upon conviction, unless compelling and extraordinary reasons exist for not doing so.

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